

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLEMASTINE GREER,

Plaintiff,

v.

ORDER
03-CV-327

UPSTATE FARMS COOPERATIVE, INC.,

Defendant..

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1), on April 1, 2004. On March 31, 2004, defendant filed a motion for motion to dismiss the complaint, and on May 19, 2004, defendant filed a motion to dismiss the amended complaint. On September 26, 2005, Magistrate Judge Schroeder filed a Report and Recommendation, recommending: (1) that defendant's motion to dismiss the complaint for insufficiency of service of process be denied and that the Court afford plaintiff 30 days from the date of this Order to request service of plaintiff's amended complaint upon defendant by the U.S. Marshal Service; and (2) that the defendant's motion to dismiss the complaint for failure to exhaust administrative remedies be denied with respect to plaintiff's claims of gender and age discrimination, and be granted with respect to plaintiff's sexual harassment claim.

Defendant filed objections to the Report and Recommendation on October 11, 2005. In lieu of oral argument on the objections, defendant submitted the issue on the papers on November 29, 2005.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the Court denies defendant's motion to dismiss the complaint for insufficiency of service of process and hereby affords plaintiff thirty (30) days from the date of this Order to request service of plaintiff's amended complaint upon the defendant by the U.S. Marshal Service. The Court also denies defendant's motion to dismiss the complaint for failure to exhaust administrative remedies with respect to plaintiff's claims of gender and age discrimination, and grants defendant's motion to dismiss with respect to plaintiff's claim of sexual harassment.

This case is referred back to Magistrate Judge Schroeder for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: November 30 , 2005